

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
CONOCOPHILLIPS COMMUNICATIONS INC.	)	FCC File No. 0001397231
	)	
Application for a 800 MHz Conventional	)	
Industrial/Land Transportation Station License at	)	
Dumas, Texas, and Request for Waiver of General	)	
Category Freeze	)	
	)	

**ORDER**

**Adopted: December 19, 2003**

**Released: December 24, 2003**

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address the above-captioned application and request for waiver (*Waiver Request*)<sup>1</sup> of ConocoPhillips Communications, Inc. (ConocoPhillips) to obtain a license for a new conventional 800 MHz Industrial/Land Transportation (I/LT) station. In this connection, ConocoPhillips seeks waiver of the suspension of filing of new applications for 800 MHz General Category channels (freeze). For the reasons set forth below, we grant the *Waiver Request*.

2. *Background.* In 1994, the Commission proposed a new licensing framework for Specialized Mobile Radio (SMR) systems in the 800 MHz band.<sup>2</sup> After release of the *Further Notice*, there was a significant increase in the number of requests for General Category channels made by SMR applicants and licensees.<sup>3</sup> On October 4, 1995, the Wireless Telecommunications Bureau imposed the freeze to ensure that resolution of the spectrum allocation issues raised in the *Further Notice* would not be compromised.<sup>4</sup> The Commission subsequently redesignated the General Category channels exclusively to the 800 MHz SMR service, whereby mutually exclusive initial applications would be subject to competitive bidding, and excluded private land mobile radio (PLMR) licensees from eligibility for this spectrum.<sup>5</sup> On reconsideration, however, the Commission reversed its decision concerning eligibility and

<sup>1</sup> The waiver request was submitted as an attachment to the application. See Request for Rule Waiver, FCC File No. 0001397231 (filed July 28, 2003).

<sup>2</sup> Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Further Notice of Proposed Rule Making*, PR Docket No. 93-144, PP Docket No. 93-253, 10 FCC Rcd 7970 (1994) (*Further Notice*).

<sup>3</sup> The General Category is comprised of 150 contiguous 25 MHz channels in the 800 MHz band. See 47 C.F.R. § 90.615.

<sup>4</sup> Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz Bands, *Order*, 10 FCC Rcd 13190 (WTB 1995).

<sup>5</sup> Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *First Report and Order*, *Eighth Report and Order* and *Second Further Notice of Proposed* (continued....)

reinstated the eligibility of PLMR applicants for General Category channels.<sup>6</sup> The Commission also partially lifted the freeze on General Category channels to permit Economic Area (EA) applicants<sup>7</sup> to relocate incumbents from the upper 10 MHz block of 800 MHz spectrum to the General Category channels.<sup>8</sup> In all other respects, the Commission maintained the freeze so as not to frustrate its efforts regarding future licensing of General Category channels.<sup>9</sup>

3. In filing its license application, ConocoPhillips seeks authority to use frequency pair 851/856.4625 MHz in support of all aspects of the oil production and transportation activities of its parent company ConocoPhillips (ConPhil) in the vicinity of Dumas, Texas.<sup>10</sup> ConocoPhillips is currently operating on this channel pair pursuant to a frequency sharing agreement with Duke Energy Field Services, LP (DEFS), and seeks to obtain a duplicate license for these operations in its own name.<sup>11</sup> ConocoPhillips's license application requires a waiver of the Commission's rules because of the freeze regarding General Category channels in the 800 MHz band. In view of this, ConocoPhillips requests a waiver of the General Category freeze.<sup>12</sup> ConocoPhillips also requires a waiver of Section 90.621(b) of the Commission's Rules,<sup>13</sup> which governs the distance separation between co-channel stations in order to protect against interference, because of the operation on the subject frequency pair by Station WNPV608, Dumas, Texas, licensed to DEFS. ConocoPhillips submits the required letter of consent from DEFS.<sup>14</sup>

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Rulemaking, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket No. 93-253, 11 FCC Rcd 1463 (1995) (*800 MHz SMR Report and Order*), and *Memorandum Opinion and Order on Reconsideration*, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket No. 93-253, 12 FCC Rcd 9972 (1997) (*800 MHz SMR Memorandum Opinion and Order*).

<sup>6</sup> *800 MHz SMR Memorandum Opinion and Order*, 12 FCC Rcd at 9975 ¶ 4.

<sup>7</sup> In the *800 MHz SMR Report and Order*, the Commission adopted geographic licensing based on EAs for the upper 10 MHz of the 800 MHz SMR service. See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1484 ¶¶ 24-25. The U.S. Department of Commerce Bureau of Economic Analysis has established 172 EAs which cover the continental United States. See *Final Redefinition of the BEA Economic Areas*, 60 Fed. Reg. 31114 (Mar. 10, 1995).

<sup>8</sup> See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1508 ¶¶ 74-75.

<sup>9</sup> *Id.* at 1509 ¶ 76.

<sup>10</sup> *Waiver Request* at 1.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. § 90.621(b).

<sup>14</sup> See Letter dated July 3, 2003 from J. Scott Pittman, Duke Energy Field Services, LP, to Industrial Telecommunications Association, Inc. (ITA). ITA is a Commission-certified frequency coordinator for Industrial/Land Transportation Category channels. A license application with waiver request seeking the same relief as the subject application and waiver request was previously filed by ConPhil's corporate predecessor, Phillips Petroleum Company, Inc. (PPC), through its license holding entity, Phillips Communications, Inc. See FCC File No. 0000964011 (filed July 16, 2002). That application was dismissed because Phillips Communications, Inc. did not certify that all co-channel licensees were served with a copy of the application, and DEFS's letter of consent, Letter dated May 9, 2001 from J. Scott Pittman, Duke Energy Field Services, LP, to Julia Biggs, Industrial Telecommunications Association, Inc., did not demonstrate either that DEFS would accept any interference (continued....)

4. *Discussion.* We may grant a request for rule waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>15</sup> We find that ConocoPhillips has demonstrated that waiver of the General Category freeze and Section 90.621(b) of the Commission's Rules is warranted under the circumstances presented.

5. Regarding the freeze, we note that it was intended to preserve the licensing landscape of the General Category spectrum so the Commission could implement its new licensing approach for the spectrum effectively.<sup>16</sup> Granting the waiver request in this situation would not frustrate the purpose of the General Category freeze.<sup>17</sup> ConocoPhillips is merely seeking a license in its own name for frequencies on which it already is operating pursuant to a frequency sharing agreement.<sup>18</sup> Essentially, ConocoPhillips desires to duplicate a license (Station WNPV608) that it originally held, but was assigned to DEFS in accordance with a joint venture agreement dated March 31, 2000, between Duke Energy Corporation (Duke) and the corporate predecessor of ConPhil (PPC).<sup>19</sup> ConocoPhillips does not seek to encumber any additional General Category spectrum.<sup>20</sup> As noted in the *Seminole County* case, the subject channels already are occupied and, thus, grant of a waiver of the General Category freeze essentially will not alter the availability of General Category spectrum.<sup>21</sup>

6. Further, granting ConocoPhillips's waiver request would promote the public interest in that it would give ConocoPhillips a greater degree of control over the spectrum and associated authorizations that it relies upon to ensure that its petroleum operations are conducted in a manner that best protects public safety, company personnel and the natural environment.<sup>22</sup> ConocoPhillips, as is recognized by DEFS, has petroleum operations independent of the larger corporate entity that require control of the subject frequencies' use. Holding a license in its own name will help to ensure better

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resulting from short spacing between the two stations or that Station WNPV608 was constructed and fully operational, as required by Section 90.621(b)(5) of the Commission's Rules, 47 C.F.R. § 90.621(b)(5). Dismissal Letter, Ref. No. 1982740 (June 17, 2003). Since the initial submission, PPC merged with Conoco, Inc., to form ConPhil, for which ConocoPhillips has replaced Phillips Communications as the license holding entity. *Waiver Request* at 1 n.1.

<sup>15</sup> 47 C.F.R. § 1.925(b)(3).

<sup>16</sup> See *800 MHz SMR Report and Order*, 11 FCC Rcd at 1508 ¶¶ 74-75.

<sup>17</sup> See *New Jersey Transit Authority, Order*, 14 FCC Rcd 4334, 4337 ¶ 9 (WTB 1999).

<sup>18</sup> See *Application of County of Palm Beach, Memorandum Opinion and Order*, 17 FCC Rcd 24563, 24565 ¶ 6 (WTB PSPWD 2002).

<sup>19</sup> DEFS is the entity that resulted from combining the natural gas gathering and processing businesses of PPC and Duke. *Waiver Request* at 1.

<sup>20</sup> See *Hawaiian Wireless Partners, Order*, 11 FCC Rcd 21192, 21196 ¶ 9 (WTB 1996).

<sup>21</sup> *Seminole County, Florida, Order*, 11 FCC Rcd 4105, 4106 ¶ 7 (WTB 1996).

<sup>22</sup> *Waiver Request* at 3.

control and, therefore reliability, of critical safety radio communications.<sup>23</sup> We also believe that granting a waiver under these circumstances is consistent with precedent.<sup>24</sup> In addition, we note that the circumstances of the *Waiver Request* are well within the specific circumstances to warrant a waiver of another processing freeze as indicated by the Commission in PR Docket 93-144.<sup>25</sup>

7. For the reasons stated herein, we find that ConocoPhillips has made the requisite showing warranting waiver of the General Category freeze. This *Order* grants ConocoPhillips's *Waiver Request* and permits the processing of the subject application. This action serves the public interest in that it will provide ConocoPhillips with a greater degree of control over the frequencies it uses to ensure that its petroleum operations are conducted in a manner that best protects public safety, company personnel and the natural environment.

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the Request for Rule Waiver filed by ConocoPhillips Communications, Inc., on July 28, 2003, IS GRANTED, and application FCC File No. 0001397231 SHALL BE PROCESSED consistent with this *Order*.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Critical Infrastructure Division  
Wireless Telecommunications Bureau

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<sup>23</sup> Wackenhut Corporation, *Order*, 13 FCC Rcd 16810, 16812 ¶ 7 (WTB 1998).

<sup>24</sup> See, e.g., Application of County of Mecklenburg, *Memorandum Opinion and Order*, 17 FCC Rcd 15608, 15611-12 ¶¶ 9, 10 (WTB PSPWD 2002); *Denton*, 15 FCC Rcd at 23646-47 ¶¶ 7, 8.

<sup>25</sup> See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Third Report and Order*, PR Docket No. 93-144, GN Docket No. 93-252, PR Docket No. 89-553, 9 FCC Rcd 7988, 8047-48 ¶ 108 (1994). In the *Third Report and Order*, the Commission suspended acceptance of new 800 MHz applications on the 280 SMR category channels and established the following criteria for waiver of that freeze: "We will consider requests for waiver of the application freeze for new station licenses for permanent facilities, provided that operation of such proposed stations affects coverage solely within a geographic area and on a frequency channel that already is licensed permanently to the applicant(s), i.e., there is no infringement of new spectrum or previously uncovered geographical areas."